

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

MIGUEL ANGEL HERRERA, #N-21055,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. 08-cv-150-MJR
)	
ROGER E. WALKER, JR., et al.,)	
)	
Defendants.)	

ORDER

REAGAN, District Judge:

Plaintiff, a prisoner in the Menard Correctional Center, has filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983. Before the Court is Plaintiff's motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 (Doc. 2). Also before the Court is Plaintiff's motion to appoint counsel (Doc. 3); his motion to amend/correct complaint (Doc. 6); and his motion to be placed in federal custody (Doc. 7).

Rule 15(a)(1) provides that Plaintiff may amend his complaint once as a matter of course before a responsive pleading is served. Because the complaint is still under threshold review pursuant to § 1915A, Defendants have not even been served with the complaint, much less filed a response to it. Therefore, Plaintiff's motion to amend/correct complaint (Doc. 6) will be granted.

A prisoner may not bring a civil action or appeal a civil judgment under 28 U.S.C. § 1915 "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that

it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

Plaintiff has had at least three prior prisoner actions dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief may be granted. *See, e.g., Herrera v. Beninato*, Case No. 96-708-JPG (S.D. Ill., filed Aug. 9, 1996) (dismissed as frivolous Nov. 11, 1996); *Herrera v. Cauthen*, Case No. 96-838-PER (S.D. Ill., filed Sept. 26, 1996) (dismissed as frivolous Jan. 27, 1997); *Herrera v. Zielinski*, Case No. 96-815-JPG (S.D. Ill., filed Sept. 18, 1996) (dismissed as frivolous March 12, 1997). Further, the allegations in the instant complaint and the amended/corrected complaint do not show that Plaintiff is under imminent danger of serious physical injury.¹ Therefore, Plaintiff’s motion to proceed *in forma pauperis* (Doc. 2) will be denied.

With regard to Plaintiff’s motion to appoint counsel (Doc. 3), there is no absolute right to appointment of counsel in a civil case. *Cook v. Bounds*, 518 F.2d 779 (4th Cir. 1975); *Peterson v. Nadler*, 452 F.2d 754 (8th Cir. 1971). When presented with a request to appoint counsel, the Court must make the following inquiries: “(1) has the ... plaintiff made a reasonable attempt to obtain counsel or effectively been precluded from doing so and (2) given the difficulty of the case, does the plaintiff appear competent to litigate it himself.” *Pruitt v. Mote*, 503 F.3d 647, 854-55 (7th Cir. 2007). With regard to the first step of the inquiry, there is no indication at all whether Plaintiff has attempted to obtain counsel or been effectively precluded from doing so. Therefore, Plaintiff’s motion to appoint counsel will be denied.

Plaintiff’s motion to be placed in federal custody (Doc. 7) will also be denied.

¹The gravamen of Plaintiff’s complaint is that he was confined in “strip cell” from January 29, 2008, to February 6, 2008.

IT IS HEREBY ORDERED that Plaintiff's motion to amend/correct the complaint (Doc. 6) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's motion for leave to proceed *in forma pauperis* (Doc. 2) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff shall pay the full filing fee of \$350 for this action within **THIRTY (30) DAYS** of the entry of this Order.

IT IS FURTHER ORDERED that if Plaintiff does not comply with this Order in the time allotted, this case will be closed for failure to comply with an order of this Court. FED.R.CIV.P. 41(b); *see generally Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994).

IT IS FURTHER ORDERED that Plaintiff's motion for appointment of counsel (Doc. 3) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's motion to be placed in federal custody (Doc. 7) is **DENIED**.

IT IS SO ORDERED.

DATED this 9th day of July, 2008.

s/ Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge